



FOIP FOLIO

A WELCOME ADDITION TO THE OIPC

We extend a warm welcome to **Roxane Priddell** in a term position as Portfolio Officer. Roxane grew up in small town Saskatchewan and earned her Bachelor of Arts in English degree from the University of Regina. In 2007, Roxane completed the University of Alberta's Information Access and Protection of Privacy Certificate Program.

Roxane has taken a leave from the Access and Privacy Consultant position for the Ministry of Corrections, Public Safety and Policing; and the Ministry of Justice and Attorney General along with the associated boards and commissions.

HIPA APPLIES TO INDEPENDENT MEDICAL EXAMINATIONS TOO



The Commissioner has just released his Report H-2008-002 (Dr. Val Mary Harding, Harding Psychological Services, Lebell & Associates) under *The Health Information Protection Act* (HIPA). The Commissioner held that HIPA

and the right of access to one's own personal health information also applies to an independent medical examination done by a psychologist. The Commissioner found that the burden of proof in respect of

reasonable expectation of injury to any person [section 38(1)(a) of HIPA] was not met by the trustee. He found that there was a need to sever certain portions of the responsive record to account for section 38(1)(c) where disclosure of identity of the source of confidential information is a basis to deny access. The Commissioner also held that an individual cannot contract out of the rights prescribed by HIPA. Finally, he also found that the trustee did not have the written policies and procedures contemplated by section 16 of HIPA. This Report is available at www.oipc.sk.ca under the *Reports* tab.

TABLE OF CONTENTS

A Welcome Addition to the OIPC	1	Another View of Facebook	3
HIPA Applies to Independent Medical Examinations Too	1	My Privacy and Me National Video Competition	4
Don't Forget Right to Know Week	2	Privacy Lesson Kits	4
Prairie Health Information Privacy Day in Winnipeg ...	2	Fees Under FOIP and LA FOIP	4
Tagging Media Request as "Sensitive" Creates Unfair and Unjustifiable Delays	3	New Access Reform Proposals in Australia	5
Kudos to Canada Health Infoway for Publishing PIA... 3		Encrypt Your Memory Stick	5
More Health Information	3	Canada's Privacy Commissioner Calls for Review of Internet Publication of Personal Information by Administrative Tribunals	5
		Future Events	6



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More Health Information	3

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DON'T FORGET RIGHT TO KNOW WEEK (September 28-October 3, 2008)

Just a reminder that the Saskatchewan Right to Know Committee has organized the following events during RTK week:

Blacked Out: Government Secrecy in the Information Age



Professor Alasdair Roberts of Suffolk University Law School and author of *Blacked Out: Government Secrecy in the Information Age* is the keynote speaker for Right to Know Week. Professor Roberts will be speaking at 4 p.m. on Tuesday, September 30, 2008.

The location is Window Room, 2nd floor, Gallery Building, College Avenue Campus, University of Regina. Reception to follow.

One reviewer, the President of the Open Society Institute, had this to say about Professor Roberts book: *Alasdair Roberts' Blacked Out is a fast-paced, well-informed and engrossing account of*

the emergence of a worldwide movement, to hold governments accountable by requiring them to disclose information they would rather withhold to conceal corruption, bureaucratic incompetence, environmental degradation, human rights abuses and other misconduct. It is essential reading for proponents of open societies."

Modernizing Access to Information in Canada: From Town Crier to The Global Village

Suzanne Legault, Assistant Information Commissioner of Canada, is the speaker at the MLT Lecture Theatre, Room 150, College of Law, University of Saskatchewan, Saskatoon. This event is on Thursday, October 2, 2008 from 11:30 a.m. to 12:30 p.m. with a reception to follow in the Faculty Lounge from 12:30 p.m. to 1:30 p.m.



RIGHT TO KNOW AT THE MOVIES



The Regina Public Library will again be offering a series of movies related to the access to information theme. *Standard*

Operating Procedure; This Film is Not Yet Rated and *Boy-A*. For more information about these movies consult the August issue of the FOIP FOLIO or visit www.rpl.regina.sk.ca.

CHIEF JUSTICE E.M. CULLITON RIGHT TO KNOW AWARD

On September 30, 2008, there will be a presentation to a Saskatchewan public sector organization that has demonstrated leadership in promoting the public's right to know. The

organization to be honoured will be announced on Monday, September 29, 2008. The recipient in 2007 was the City of Regina and in 2008 the Saskatchewan Health Quality Council.

PRAIRIE HEALTH INFORMATION PRIVACY DAY IN WINNIPEG

There is still time to register in what should be an excellent conference on October 22, 2008. This will focus on best practices from the three Canadian provinces that have more experience

with a stand-alone health information law than any other Canadian jurisdiction. For detailed information on this conference look at the August 2008 FOIP FOLIO, pages 3 and 4.



TAGGING MEDIA REQUESTS AS "SENSITIVE" CREATES UNFAIR AND UNJUSTIFIABLE DELAYS

The federal Information Commissioner, **Robert Marleau**, has issued a number of recommendations to the President of the Treasury Board and to the heads of 20 other federal government institutions. This was in response to a complaint from the Canadian Newspaper Association. Commissioner Marleau concluded that "access requests that are labelled as "sensitive", or "of interest", "amber light" or

with some other label indicating a need for "special handling", whether they are made by the media or any other group, are subjected in most government institutions we investigated to unwarranted delays in processing". More information is available at the Canadian Newspaper Association website, www.cna-acj.ca and at the Commissioner's website, www.infocom.gc.ca.

KUDOS TO CANADA HEALTH INFOWAY FOR PUBLISHING A PRIVACY IMPACT ASSESSMENT (PIA)



In our 2007-08 Annual Report, our office recommended that there be more transparency to the public concerning the development of electronic health records (EHR) by Canada Health Infoway (CHI) and provincial health ministries (page 19). We are encouraged that CHI has now published

on its website a conceptual Privacy Impact Assessment undertaken on the entire EHR initiative. It identifies important privacy questions. We highly recommend that Saskatchewan trustees become familiar with this document. It can be located at www.infoway-inforoute.ca/Admin/Upload/Dev/Document/CHI_625_PIA_rj13.pdf. We are also hopeful that Saskatchewan Health will similarly post its project-specific PIAs to its website.

MORE HEALTH INFORMATION

Ontario's Information and Privacy Commissioner, **Ann Cavoukian**, has produced a comprehensive package of 26 recommendations for amendment of that province's *Personal Health Information Protection Act* (PHIPA).

This was part of her office's submission to the Standing Committee undertaking the statutory 3 year review of PHIPA. This submission is available at www.ipc.on.ca.

ANOTHER VIEW OF FACEBOOK

This summer, the United Kingdom High Court of Justice, Queen's Bench Division released its judgment in the case of *Applause Store Productions Limited, Matthew Firsh v. Grant Raphael* [2008] EWHC 1781 (QB). This involved a falling out of two former friends. One

of the individuals was alleged to have set up a false profile on Facebook that defamed the other. The judgment contains a wonderfully clear and granular description of the social networking site, its features and how it functions.



MY PRIVACY AND ME NATIONAL VIDEO COMPETITION

If you know a Saskatchewan youth between the ages of 12 to 18, please suggest that they consider the video competition sponsored by the Privacy Commissioner of Canada. The challenge is to create a public service announcement on the issue of privacy – maximum of 2 minutes. This video should be focused on young people and be about current privacy issues and the importance of protecting personal information. The deadline for entries is December 12, 2008. The recently launched website for youth,

www.youthprivacy.ca should help generate ideas. The school with the most entries will receive an Adobe Creative Suite software design package. The young person who wins the contest will win an iPod Touch and a \$100 gift card; second prize is a \$250 gift card; third prize is a \$150 gift card.



PRIVACY LESSON KITS

The office of the Privacy Commissioner of Canada has produced two teaching lessons, one for Grades 7-8 and one for Grades 9-12. They have been developed by the Media Awareness Network (MNet). MNet is a Canadian leader in developing educational resources to promote

critical thinking amongst children and youth regarding electronic privacy. The two lessons are "Privacy and Online Life," for Grades 7-8 and "The Privacy Dilemma," for Grades 9-12. More information is available at www.privcom.gc.ca.

FEES UNDER FOIP AND LA FOIP



Our office is finding that a number of government institutions are preparing what we consider excessive fee estimates. This seems to be the result of government institutions charging for 'thinking time' or 'reviewing time' when processing access requests. Our office issued a number of specific recommendations in our Report F-2005-005 (Sask Energy). The Commissioner observed in that Report that: "*Time spent reviewing records for release and identifying records that require severing would be activities that should be considered as part of the government institution's general responsibilities under [FOIP]*". He also stated in that Report, "*I find that the FOIP Regulation contemplates a charge for actually*

severing a record. I find that it would not contemplate time for:

- *Deciding whether or not to claim an exemption*
- *Identifying records requiring severing.*" [51]

Only time taken for physically severing records is compensable as preparation costs under the FOIP Regulations. These OIPC recommendations were the result of a review of fee estimate provisions and practices in other Canadian jurisdictions and represent an attempt to harmonize our approach with that prevalent across Canada. Public bodies are not entitled to charge fees for 'thinking time' or 'reviewing time'. In any event, we encourage all public bodies to read and become familiar with our Report and make the necessary changes in their practices for managing access requests.



NEW ACCESS REFORM PROPOSALS IN AUSTRALIA



Professor **Rick Snell** of Tasmania, a past visitor to our Saskatchewan office, has alerted us to a decision by the Queensland government to accept all but two of the 141 recommendations for freedom of information changes in its state law. The recommendations come from the Solomon review panel. You can access both the Solomon report and the Queensland government's response at www.foi.qld.gov.au.

Other jurisdictions such as Tasmania have shown interest in the Solomon report. More information is available at www.foi-privacy.blogspot.com. This story reminds us of the need in all jurisdictions to reassess access to information laws from time to time and determine if they can be improved to meet the objective of more transparent public bodies. We are hopeful that the Saskatchewan Legislative Assembly will soon review our 16 year old FOIP Act. This has been a regular recommendation in each of the OIPC Annual Reports for the last 5 years.

ENCRYPT YOUR MEMORY STICK



In a late August announcement, the U.K. Home Office has admitted the loss of confidential information on almost 130,000 prisoners. Apparently the details had been stored on an unencrypted computer memory stick. The stick had been lost by a contractor that had been recruited to track and analyse serious and prolific offenders. The contractor had received this information from the Home Office by way of a secure encrypted email, which was then transferred in an unencrypted

form to the memory stick that was then lost. Memory sticks can have large capacity and yet are so small they are easy to lose or to be stolen. Any Saskatchewan organization that uses a memory stick for personal information or personal health information of individuals should ensure that there is encryption protection. You might also wish to refer to the Ontario May 2007 Fact Sheet – *Encrypting Personal Health Information on Mobile Devices* at www.ipc.on.ca.

CANADA'S PRIVACY COMMISSIONER CALLS FOR REVIEW OF INTERNET PUBLICATION OF PERSONAL INFORMATION BY ADMINISTRATIVE TRIBUNALS

In her address to the Canadian Bar Association in Quebec City last month, **Jennifer Stoddart** observed *"The open court rule, which is extremely historically important, has now become distorted by the effect of massive search engines so that documents containing all sorts of personal information find themselves searchable worldwide. That wasn't really the context in*

which this rule evolved." This observation is very consistent with the recommendations in our Investigation Report 2005-001 (Automobile Injury Appeal Commission) available at our website, www.oipc.sk.ca.



FUTURE EVENTS

September 30, 2008 -- Right to Know Reception featuring **Professor Alasdair Roberts** - Regina, Saskatchewan at the Johnson-Shoyama Graduate School of Public Policy, Window Room (Gallery Building, 2nd Floor, College Avenue and Cornwall Street), from 4:00pm-6:00 pm. No cost.

October 2, 2008 -- Right to Know Event featuring **Suzanne Legault, Assistant Information Commissioner of Canada** - Saskatoon, Saskatchewan at the MLT Theatre in the College of Law, University of Saskatchewan, from 11:30am-12:30 pm. No cost.

October 22, 2008 -- Prairie Health Information Privacy Day 2008 – Winnipeg, Manitoba (visit <http://verney.ca/phipd2008/> for more details)

November 3, 2008 -- 2008 Electronic Health Information and Privacy Conference – Ottawa, Ontario (visit <http://www.ehip.ca/> for more details)

November 13-14, 2008 -- Internet Law: Latest Developments and Strategies – Vancouver, BC (visit http://www.cwilson.com/seminars/internetlaw_nov08.pdf for more details)

November 18-19, 2008 -- COACH: Fall Forum – Toronto, ON (visit <https://secure.coachorg.com/default.asp?ID=809> for more details)

November 24-25, 2008 -- Privacy and Identity Theft Conference – Vancouver, BC (visit www.idconference2008.com for more details)

January 19-20, 2009 -- Privacy Compliance – Calgary, AB
(visit <http://www.canadianinstitute.com/Home.htm> for more details)

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send your e-mail address to webmaster@oipc.sk.ca.*



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